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NEW DELHI, FRIDAY, JUNE 10, 1955

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 3rd June 1955

S.R.O. 1258.—In continuation of the Election Commission's notification No. 19/35/52-Elec. III/4428, dated the 4th April, 1955, published in the Gazette of India Extraordinary, Part II, Section 3, dated the 20th April, 1955, under section 106 of the Representation of the People Act, 1951 (XLIII of 1951), the Election Commission hereby publishes the Orders of the High Court of Judicature at Madras dated the 30th April and 16th June, 1954 and Judgment of the Supreme Court of India delivered by it on the 29th March, 1955, on the appeal filed before these Courts by Shri N. Satyanathan of Shankaridrug, Salem District, Madras State against the judgment and order of the Election Tribunal, North Arcot, Vellore, dated the 22nd January, 1953, in election petition No. 35 of 1952.

IN THE HIGH COURT OF JUDICATURE AT MADRAS (Special Original Jurisdiction)

Friday, the Thirtieth day of April, One thousand nine hundred and fifty four.

PRESENT:

The Hon'ble Mr. Justice Rajagopala Ayyangar
WRT PETITION NO. 71 of 1953

N. Satyanathan—Petitioner.

1. K. Subramanyam
2. D. K. Gurunatha Chettiar
3. M. G. Natesa Chettiar
4. Arogyaswami Pillai
5. T. S. Pattabiraman
6. S. K. Baby alias Kandaswami
7. R. Nallathambi Goundar
8. Kulandaivelu
9. Q. S. Nataraja Goundar
10. D. C. Rajan
11. The District Judge of North Arcot at Vellore
12. The Election Commission, New Delhi—Respondents.

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated in the affidavit filed therewith the High Court will be pleased to issue a Writ or Certiorari or any other appropriate writ or directions calling for the records relating to the proceedings in Election Petition No. 35 of 1952 before the Election Tribunal, North Arcot at Vellore now in the custody of the 11th respondent herein, the District Judge of North Arcot, Vellore and quash the same including the order pronounced by the aforesaid Election Tribunal on 22nd January 1953 and grant costs of this petition.

ORDER

This petition coming on for hearing on Monday and Tuesday the 5th and 6th days of April, 1954 upon perusing the petition and the affidavit filed in support thereof, and the order of the lower court and the counter affidavit filed here in and the records in the case and upon hearing the arguments of Mr. M. K. Nambiar, Advocate for the petitioner, and of Mr. S. Viswanathan, and Mr. B. R. Dora, Advocates for the 1st Respondent and of Mr. G. Nararajan Advocate for the 2nd Respondent and of the Special Government Pleader on behalf of the Respondent No. 11 and other respondents not appearing in person or by advocate and having stood over for consideration till this day the Court made the following Order:

This is a petition for the issue of writ of certiorari to quash the decision of the Election Tribunal, North Arcot, Vellore constituted under the Representation of People Act of 1951.

The petitioner and respondents 1 to 10 were nominated as candidates for the General elections to the House of the People from Dharmapuri Parliamentary constituency and at the election held on 11th January 1952, the petitioner was declared duly elected by the Returning Officer. This was notified in the Official Gazette, and the petitioner took his seat in the House of the People.

While so the first respondent filed an election petition before the Election Commissioner, New Delhi, to set aside the petitioner's election on the ground, that the latter was disqualified for standing as a candidate by reason of the provision enacted in Sec. 7(d) of the Representation of the People Act. This provision is as follows: Sec. 7—Disqualifications for membership of Parliament: A person shall be disqualified for being chosen as, and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State,.....if whether by himself or by any person or body of persons in trust for him, or for his benefit, or on his account, he has any share or interest in a contract for the supply of goods to or for the execution of any works, or for the purpose of any services undertaken by the appropriate Government. As the petitioner stood for election to the House of the People, the appropriate Government in the particular case is the Government of the Union.

The ground, upon which this disqualification was rested, was that the petitioner who was a transport operator had entered into a contract with the Union Government for the conveyance of mails by his transport vehicle between Salem Junction and Yercaud. The Election Tribunal of North Arcot, to whom the enquiry into this election petition was referred by the Election Commission, held the petitioner to be disqualified and set aside his election, and directed a re-election to be held, and the petitioner, complaining about this order of the Tribunal, has moved this Court for the issue of a writ of certiorari to quash it.

"The facts are not in dispute. The petitioner is the proprietor of the N. S. Motor Service, operating in Salem. The Postal authorities have for a long time been utilising the services of transport operators for conveyance of mails. Under Sec. 48 of the Motor Vehicles Act, the Regional Transport Authority, "may after consideration of the matters set forth in Sec. 47(i)(d)...." attach to a stage carriage permit any prescribed conditions of any one or more of the following conditions...." Prescribed' is defined to mean 'prescribed by the rules', and Rule 160 (B) provides

"It shall be a condition of every stage carriage permit that the holder of the permit shall, if so required by the transport authority which granted the permit, carry mails at such rates and on such terms as the transport authority may fix after consultation with the holder of the permit and the postal authorities concerned."

This statutory condition is incorporated in the standard permit forms for stage carriages issued by transport authorities, and in terms exactly identical with Rule 160(B). The petitioner was directed under this rule to carry mails,

and the petitioner was directed to be present at a meeting of the Regional Transport Authority for fixing the reasonable subsidy payable to him for the conveyance of postal mails between Salem and Yercaud. The meeting was held on 19th July 1949 and at this meeting, evidently after consultation with the postal authorities, the subsidy, which before that date was Rs. 160 per year, was raised to Rs. 200 per year.

Under the rules governing the postal department, a formal agreement has to be executed by contractors for the conveyance of mails by motor vehicles. This agreement was originally recited to be between the Governor General on the one part and the contractor on the other. It will be convenient to set out here the terms of this contract, before considering their effect. Under clause (1) the contractor "shall during the continuance of the contract duly and safely convey, between the places mentioned 'by means of motor vehicles', 'postal articles and mail bags.' Under clause 4 the contractor was permitted to carry passengers provided there was accommodation available and provided the mail service is not prejudiced in any way, and in particular by interference with the speed of the vehicle or with the mails in any way". Condition No. 5 insists upon the contractor, for the purpose of his duties under the contract, maintaining, and providing sufficient number of motor vehicles and spare vehicles, subject to the approval as to the soundness, condition and fitness by some person to be deputed by the Postmaster-General. The vehicles used for the conveyance were also directed to be fully repainted by the end of March and October of each year. Clause 7 provides for penalties for failure to maintain efficient service and prescribes the sums, which would be payable by the contractor in such an event. Clause 10 enabled non-gazetted postal and telegraph officers travelling on duty to travel with their personal luggage on the motor vehicles free of all charge, and it also provides that such officers shall have precedence over ordinary passengers, provided 12 hour notice was given to the contractor. Clause 15 provides for the payment of the remuneration for the services to be performed by the contractor. Under clause 17 the contractor has to deposit with the Government a particular sum as security for the due and faithful performance by the contractor of all conditions hereinbefore contained and in clause 18. It shall be lawful for Government or any person authorised by him in that behalf either in addition to or in lieu of any other remedies hereinbefore provided without notice to the said contractor absolutely to rescind and determine this Agreement forthwith and to forfeit the whole or any part of the said deposit without rescinding the Agreement but any such rescission and forfeiture or forfeiture without rescission shall be without prejudice to all other remedies of Government in respect of any and every such breach or non-performance. It also provides for the forfeiture of the security deposit in the event of the contractor failing to perform the duties undertaken by him and clause 20 provides for a reference to arbitration of disputes and differences arising under the contract by the Director General of Post and Telegraphs, or other person appointed by him. The petitioner had entered into a formal contract in these terms, and under it carrying mails, and receiving the subsidy of Rs. 200 fixed by agreement in July 1949, when he filed his nomination paper for the election to the House of the People. The first respondent objected to this nomination on the ground that by reason of this contract for the carriage of mails, the petitioner was within the disqualification specified in Sec. 7(d) of the Representation of Peoples Act, and that his nomination should be rejected. The Returning Officer, however, held the nomination to be in order on the ground "that the services done by carrying mails is not under an agreement but on an imperative order of the Government under Sec. 160(B) of the Madras Motor Vehicles Rules.....The candidate Sri N. Sathiyananthan affirms that he is merely obeying the orders of the Government imposed on him for a certain subsidy fixed by the Government for the carriage of the goods and it is not at all open to him to decline to carry on his services and the arrangement is not based on any contract. The objection is overruled." As stated before, the petitioner stood for the election and succeeded in securing a majority of the votes and was declared duly elected. The same objection, as was put forward at the time of scrutiny of the nomination, was urged by the first respondent in the election petition, and in this court.

The argument on behalf of the petitioner may be summed up thus. It is no doubt true that a formal agreement has been executed between the Union Government and the petitioner, and it is for the purpose of services undertaken by the Union Government, namely, Postal Services. But though in name it is an agreement, it has none of the characteristics of a consensual contract. In effect the services, which the petitioner is rendering to the Union Government are those which he has been directed so to render by the terms and conditions

of the permit which he has obtained as a transport operator, and as he has no option but to enter into such a contract, by reason of rule 160(B), it is devoid of all volition and has, therefore, not the elements of a contract. A contract, according to the petitioner, to fall within Sec. 7(d) of the Representation of the People Act 1951 must be one, which a party is free to enter into or to decline to enter and where he has no such option, and has has perforce to enter into an agreement, the resultant obligation is really not by virtue of a contract, but by force of the statute. In other words, if it had been a term of his licence or permission, that he should render this particular service to the State he could not be disqualified as a person who had entered into a contract for the performance of services undertaken by Government. Merely because the statutory obligation takes the form of a contract, the essential nature of the transaction is not altered, but it is nevertheless in substance, and in effect, the performance of a statutory and not of a contractual obligation. In other words it is the statutory obligation that wears the garb of a contractual duty, but the Court should look at the substance, and not at the form which for convenience or other purpose it assumes. In this connection stress is laid upon (1) rule 160(B) of the Motor Vehicles Rules which statutorily imposes upon each transport operator the duty of carrying mails if so directed. It is, therefore, argued that no volition is left in these operators consequently an essential element of a contract, namely, the option not to enter into it, is wholly lacking in the present case. (2) Even when these obligations are performed by the transport operator, the terms and conditions on which he should perform them or render the services, are not left to him to bargain or settle, but it is the function of the transport authority to fix the terms conditions and rates, though it might be after consultations with the operator and the postal authorities. Therefore there is no question of his bargaining for the terms or seeking to vary the terms, which might have been suggested by the postal authorities. As the obligations are carried out *in invitum*, the essential element of a contract is wanting in this case. It is, therefore, argued that the petitioner has not entered into a contract, as defined by the Indian Contract Act, with the Union Government for the purpose of performing services undertaken by the latter.

Reliance is sought for this method of approach in the decision of the Court of Appeal in *Ransom v. Surbiton* (1). There the defendants, who were the interim development authority under the Town and Country Planning Act of 1932 had entered into an agreement with the plaintiffs by virtue of Sec. 34 of that Act under which the local authority undertook not to interfere with a lay-out scheme of the plaintiffs. Sec. 34 of the Act enabled agreements to be made. In pursuance of this agreement, the plaintiff developed portion of their lands. Subsequently in February 1946, when the plaintiffs proposed a particular development of the rest of their lands, it was refused by the Development authority on the ground, that it would contravene the proposals for the Greater London Plan. The defendants also submitted to the minister an application under Sec. 4 of the Town and Country Planning Act of 1943, revoking the permission granted to the plaintiffs under Sec. 34 already referred to. The plaintiffs then brought the action, claiming damages on the ground that the development authority had committed a breach of that agreement, their contention being that, by entering into the agreement and sanctioning under Sec. 34 of the Act, the defendants the development authority, had assumed a contractual obligation not to exercise statutory power, to restrict the plaintiffs' development and planning as provided in the agreement. The matter came up before Romer, J, in the first instance and he dismissed the suit. The plaintiffs then appealed to the Court of Appeal, which affirmed the decision dismissing the suit. No doubt there are some observations in the judgment of Lord Greene M.R., stating that the agreement, which was entered into under Sec. 34 would have no greater efficacy or force than the section itself. But the ground upon which the plaintiffs were non-suited was that assuming the plaintiffs' contention to be right, namely, that the agreement entered into between them and the development authority in 1939 was contractual and prevented the development authority from using their statutory powers, the same would be invalid in law as a public statutory body cannot abdicate their statutory powers, or enter into restrictive agreements, which might limit or circumscribe the exercise of their statutory planning powers. Further in that case, it was a question of an agreement entered into with the body, which was exercising the statutory powers, and I do not read that judgment as meaning that in every case where an agreement is permitted by statute or is directed to be entered into under a statute, the resulting agreement is not a contract.

Moreover, if transport operator with the full knowledge that if he were granted a permit he would have to enter into a contract to carry mails, makes an application for a permit for a stage carriage, and obtains the same, it could

hardly be said that he does not enter into the contract voluntarily for his very application for a permit implies a consent to enter into the agreement if so directed with the postal authorities for the carriage of mails on such terms and conditions, as the transport authority might fix. Moreover in the present case, there is this further fact that the obligation, which the petitioner owes under the statute is to the transport authority but the contract itself is with the Union Government. That would show that the decision in Ransom's case has no application to the present, even if the view contended for by the petitioner as to the proper construction of that decision is accepted.

However, I have set out the various terms and conditions of the contract, which are not statutory conditions, to which the petitioner is subject to by virtue of his being a transport operator, that is the conditions subject to which the permit is granted to him under section 48 of the Motor Vehicles Act. To mention only a few, in consideration of the payment of the subsidy by the Union Government, the petitioner has undertaken to transport free of charge postal officials. Certainly this is not an obligation, which he is bound to fulfil under any provision of the Motor Vehicles Act. There are other similar conditions in the contract, which I have already referred. These were certainly not conditions or terms referable to those imposed upon a transport operator by those contained in the permit under Sec. 48 of the Motor Vehicles Act.

I must here refer to an argument of Mr. Nambiyar, the learned counsel for the petitioner, that the Union Government had used an antedeluvian form for entering into this contract, and that the mere fact that this form was used ought not to have been taken as an indication that the transaction represented by it was a 'contract' within the meaning of Sec. 7(d).

I am unable to agree with this contention, where the transaction between the parties is embodied in the form of a formal agreement, that is the only repository of the rights and obligations undertaken by the parties. It might very well be that owing to force of statute, one of the parties, might have rights, which are denied to the other. But this does not detract from the transaction constituting a contract or depriving it of the essential elements of a consensual agreement.

For these reasons, I am of the opinion that the petitioner had a subsisting contract with the Union Government, for the purpose of services undertaken by the latter on the date of his nomination, and election, and that he was consequently disqualified from standing for election to the House of the People.

The Writ Petition fails, and is dismissed with the costs of the first respondent, which I fix at Rs. 100.

(Sd.) B. SOMANATH RAO.
Asstt. Registrar Appellate Side
K. SRINIVASAN
Sub Assistant Registrar, App. Side.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 252 OF 1954.

N. Satyanathan—Appellant

versus

K. Subramanyan and Others—Respondents.

Appeal by Special Leave from the Judgment and order dated the 22nd January 1953 of the Election Tribunal, Vellore in Election Petition No. 35 of 1952.

The 29th day of March, 1955.

PRESENT:

The Hon'ble Mr. Justice Vivian Bose

The Hon'ble Mr. Justice B. Jagannadhas

The Hon'ble Mr. Justice Bhuvaneshwar Prasad Sinha

For the Appellant: Mr. N. C. Chatterjee, Senior Advocate (Mr. A. N. Sinha and Mr. N. H. Hingorani, Advocates with him).

For Respondent No. 1: Dr. C. V. L. Narayan, Advocate.

JUDGMENT

The Judgment of the Court was delivered by SINHA J.—The only question for determination in this appeal by special leave is whether the appellant is disqualified under section 7(d) of the Representation of the People Act, 1951 (hereinafter

called the Act) for election to the House of the People, as held by the Election Tribunal, North Arcot, Vellore, by its orders dated the 20th January, 1953 in Election Petition No. 35 of 1952.

The facts of this case are not in dispute and lie within a narrow compass. The appellant and respondents 1 to 3 contested the last general elections from the Dharmapuri Parliamentary Constituency in the district of Salem in the State of Madras. Respondents 4 to 10 who were added subsequently by an order of the Tribunal were also candidates for election. Their nominations also had been held to be valid but they ultimately withdrew their candidature before the polling took place. The appellant was in due course declared to have been elected to the House of the People. Thereafter, on the 5th March, 1952 the 1st respondent filed an election petition before the Election Commission contesting the appellant's election on the ground that the appellant was disqualified under section 7(d) of the Act as, from the date of his nomination and until the date of election and after, the appellant had a contract with the Government of India in the Postal Department for the transport of postal mail which was a service undertaken by the Government of India. At this stage it is necessary to state that it is admitted that the appellant is and has been the holder of a stage carriage service permit (Ex. B-2) dated the 26th April, 1949, issued by the Regional Transport Authority, Salem, Madras. It was one of the conditions of the said permit that if called upon the appellant will enter into an agreement with the Government of India for the transport of postal articles and mail bags. In pursuance of that obligation the appellant entered into a registered agreement with the Government of India on the 18th November 1949 (Ex. A-3) to be noticed in detail hereinafter. After the appellant had filed his nomination paper, the 1st respondent by his petition dated the 28th November 1951 raised the objection to the effect that his nomination should be rejected on the ground that he had entered into a contract with the Government of India for his own benefit for the transport of mail between Salem and Yercaud. The Returning Officer for the Dharmapuri Parliamentary Constituency Salem, by his orders (Ex. A-2) of the same date overruled the objection holding that the service rendered by the appellant of carrying mail is not under an agreement but on an imperative order of the Government under Rule 160-B of the Madras Motor Vehicles Rules. Apparently the registered agreement (Ex. A-3) had not been placed before him.

To the election petition filed by the 1st respondent the appellant filed his written statement on the 28th May 1952 denying that he was disqualified for election as a member of Parliament by virtue of the provisions of section 7(d) of the Act. His contention was that "it is the exclusive privilege of the Government of India to convey all postal articles from one place to another and it is a normal function of the Government statutorily reserved to itself. There is no justification to regard the carrying of mails from one place to another as the performance of any service undertaken by the Government". It was further averred on behalf of the appellant that it was not justifiable to regard him as having any interest in a contract for the performance of any service undertaken by the appropriate Government within the mischief of section 7(d) of the Act; and that he had been only carrying out the obligations imposed upon him by Rule 160-B of the rules framed under the Motor Vehicles Act. It was also contended that under Article 103 of the Constitution of India the question as to the disqualification of a member has to be decided by the President whose decision shall be final.

On those pleadings the following issues were framed by the Election Tribunal:—

1. Is the nomination of the 1st respondent invalid because of the prohibition contained in section 7(d) of the Representation of the People Act, 1951, or for any of the reasons set forth in paras. 9 to 11 of the Petition?
2. Has this Tribunal no jurisdiction to decide the question as regards the disqualification of the returned candidate, because of Article 103 of the Constitution of India?

It is not necessary to refer to the additional issue bearing on the question of limitation arising from an interlocutory application for impleading those candidates (respondents 4 to 10) whose nomination had been accepted but who had withdrawn from the contest. Both these issues were decided against the appellant. The Tribunal on a very elaborate discussion of the points raised before it, held that the postal service including the transport of mails is a service undertaken by the Central Government within the meaning of section 7(d); that at the date of the nomination the appellant was a contractor under the Central Government; that the agreement between the Government and the appellant involved mutual obligations which could not be referable to a bare

statutory duty on the part of the appellant but that it was the result of mutual assent based upon a free offer and acceptance; and that the agreement was supported by valid consideration. The Tribunal also held that Article 103 of the Constitution was not a bar to its jurisdiction to decide the controversy. Accordingly it allowed the election petition and held the appellant's election to be void in terms of section 100(1)(c) of the Act, with costs to the respondent. Hence this appeal.

In this appeal the contentions raised before the Election Tribunal, except the objection to the Tribunal's jurisdiction in view of the provisions of Article 103 of the Constitution, have been pressed before us by the learned counsel for the appellant. It is manifest that the determination of this case must depend upon the true construction and legal effect of the agreement (Ex. A-3) admittedly entered into by the appellant with the Central Government. It is therefore necessary to set out in some detail the relevant clauses of the agreement. The appellant (called the "contractor") is of the one part and the Governor-General of India of the other. The preamble says—

"Whereas the said contractor Sri N. Sathianathan has offered to contract with Governor-General for the provision of a Motor Vehicle Service for the transit conveyance and delivery of all postal articles and mail bags as defined in the Indian Post Office Act, 1898, as amended from time to time.....from the 15th day of December 1949 to the 14th day of December 1952 and the Governor-General has accepted such offer upon the terms and conditions hereinafter appearing.....

Now this indenture witnesseth that the contractor in pursuance of the said agreement and in consideration of the premises and of the payments hereinafter agreed to be made to him.....

It is hereby mutually agreed and declared between and by the parties hereto as follows:—

1. Contract to carry:—The contractor shall during the continuance of this contract, that is to say, from the 15th day of December 1949 until the 14th day of December 1952 or until the said contract shall be determined by such notice as is hereinafter mentioned or otherwise in (hereinafter referred to as the said contract period) duly and safely convey.....by means of motor vehicles of good and reliable manufacture all postal articles and mail bags.....".

By clause 4 the contractor is permitted to carry passengers and their luggage by bus provided there is accommodation available and provided that the mail service is not prejudiced in any way. By clauses 5 and 6 the contractor is required to maintain in good order and repair a number of motor buses and their spare parts at his own expense and to bear all municipal and other taxes payable in respect of the motor vehicles. Clause 7 contains the schedule of penalties in the event of non-completion of any journey or of delay in completion thereof in accordance with the time table, etc. By clause 8 the contractor is made absolutely liable and responsible for the due and safe custody and delivery in good order and condition of postal articles and mail bags. By clause 10 non-gazetted postal and telegraph officers travelling on duty on the route allotted to the appellant are declared to be entitled to travel free of all charges and such official passengers shall have precedence over ordinary passengers. Clause 13 provides that the contract shall not be transferred by the contractor to any person or company without the previous consent in writing of the Director-General of Posts & Telegraphs. By clause 15 the Government agrees to pay to the contractor Rs. 200 per month during the subsistence of the agreement "as his remuneration for service to be rendered by him hereunder". This monthly sum of Rs. 200 is liable to be increased or decreased proportionately to the increase or decrease in the mileage to be covered. Clause 18 is in these terms:—

"In the event of the contractor failing to secure a renewal of the permit on the line this contract will automatically terminate on the date up to which the old permit shall be valid and in such case no compensation shall be payable to either party for such termination. This contract may be absolutely determined and put an end to by either of the contracting parties giving four calendar months notice in writing to the other of his intention so to determine and put an end to the same".

Clause 21 contains the usual arbitration clause to the effect that all disputes and differences arising out of or in any wise touching or concerning the agreement shall be referred to the sole arbitration of the Director-General of Posts and Telegraphs or his nominee. It is also provided that the award of the arbitrator shall be final and binding on the parties.

It will be observed that the agreement set out above is a formally drawn up document which satisfied all the requirements of a contract. It is not the appellant's case that the contract has been vitiated by undue influence, fraud or such cause. But it has been argued that it was a necessary sequel to the stage carriage permit granted by the Transport Authority under the Motor Vehicles Act read along with the relevant rules. In this connection reference was made to Rule 160-B of the Madras Vehicles Rules which is as follows:—

"It shall be a condition of every stage carriage permit that the holder of the permit shall, if so required by the transport authority which granted the permit, carry mails at such rates and on such terms as the transport authority may fix after consultation with the holder of the permit and the postal authorities concerned".

The rule quoted above has apparently been made under the authority of section 48(d) of the Motor Vehicles Act. It is common ground that the agreement aforesaid between the appellant and the Central Government is in pursuance of Rule 160-B aforesaid; but it has been argued on behalf of the appellant that though the agreement aforesaid has the "semblance of a contract" it is lacking in the "essential ingredients of a free consensus of acceptance and offer". This argument is based on the further contention that the appellant has been carrying mail on his buses in performance of a statutory obligation which cannot come within the mischief of section 7(d) of the Representation of the People Act, 1951. The material portion of the section is in these terms:—

"A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament.....

(b) If, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for.....the performance of any services undertaken by the appropriate Government."

It has further been argued alternatively that if the agreement has the force of a contract, it is totally lacking in consideration because the monetary consideration provided for in the agreement is no more than the subsidy already fixed by the Regional Transport Officer by his orders dated the 23rd July 1949; that the agreement in question being with a third party, namely, the Governor-General, to render service which was already due to another party, namely, the Transport Authority for the same consideration cannot amount to a valid contract supported by consideration; and finally, that the transport of mail is not a "service undertaken by the Central Government".

In our opinion, there is no substance in any one of these contentions. It is true that the appellant entered into the contract aforesaid with the Central Government for the transport of postal articles and mail bags on the 16th November, 1949. From before that date he had been carrying on the business of plying buses on the route allotted to him by the Regional Transport Authority. But he entered into the contract with his eyes open and knowing full well his rights and liabilities under the same. No one is compelled to carry on the business of stage carriage service or for the matter of that, of transporting postal articles and mail bags. In terms of the permit, it is open to the Government to call upon a permit holder to undertake the additional burden of carrying postal articles and mail bags which carries with it the additional remuneration to be fixed by the Transport Authority after consultation with the postal authorities and the carrier. It is not every stage carriage permit holder who is called upon to do so. At the time the appellant entered into the contract with the Government in the postal department he may not have had any idea of standing for election to the House of the People when in future the general elections came to be held. If he wished to steer clear of the difficulty created by s. 7 of the Act, he could have given due notice to Government under cl. 18 of the contract referred to above. On the expiry of the term of the notice he would have been free to stand for election to a State or Central Legislature. S. 7 of the Act is clearly intended to avoid a conflict between public duty and private interest.

The Tribunal discussed a number of authorities with reference to the English and American Law of Contract for arriving at the conclusion that the agreement between the appellant and the Government of India in the Postal Department had

all the ingredients of a valid contract. The Tribunal need not have travelled so far afield, especially when the provisions of the Indian Contract Act which govern the case are sufficient to answer all the contentions raised on behalf of the appellant. On the face of the transaction the agreement was between two competent parties with their free consent. There was no question but that there was lawful consideration. The permit for the stage carriage had been granted by the authority under the Motor Vehicles Act; and the agreement for transport of postal articles and mail bags was between the Government of India in the Postal Department and the appellant for a cash consideration.

But it was argued that the agreement was in pursuance of a pre-existing obligation imposed by the rule aforesaid framed under the Motor Vehicles Act. It is true that the permit does contain a condition that the permit-holder may be called upon to undertake transport of mail bags and postal articles but that is only a notice to intending applicants for a stage carriage permit that the grantee of such a permit may have to render that additional service for an additional remuneration if called upon to do so by the authorities of the Postal Department. If any one was not prepared to undertake that additional responsibility, he was free not to make an application for such a permit; but that does not mean that the agreement actually entered into between the Postal Department and the permit holder is not an independent contract governed by its own special terms. As indicated above, clause 18 has reserved the right to either party to terminate the contract on giving four months' notice. The appellant must be presumed to have known that the agreement that he had entered into with the Postal Department will stand in the way of his running as a candidate for election to the Central or the State Legislature. There was nothing to prevent him from giving the necessary notice to the department and thus terminate his agreement so as to be free to stand as a candidate for election to the legislature. Section 7 of the Act is intended to ensure that there is no occasion for a conflict between public duty and private interests. The appellant had a clear and free choice before him. If he was anxious to serve the community as a member of the Central Legislature, he had to give up his private gains in the shape of the remuneration for carrying postal articles and mail bags in his buses. It may be that on his terminating the agreement with the postal department he would have to give up his stage carriage permit also but not necessarily so. If on the same route a number of bus services are permitted to different parties, the Postal Department may choose any one of them to enter into the agreement for the carriage of mail bags and postal articles. But even if there was only one service for the route in respect of which the appellant held the stage carriage permit, if he had to give up his permit, some other party would take his place for running the bus service and carrying the postal articles and mail bags.

It was further argued that the appellant had no hand in the fixing of the remuneration to be paid by the Postal Department for carrying its mails, etc. But it is clear, by a reference to the terms of the rule quoted above, that the amount of the remuneration had to be fixed by the department after consultation with the carrier. It was always open to the latter to demur to the terms proposed by the department and if he found that the department was not prepared to accept his terms he was not bound to enter into the agreement. The fact that he had agreed to carry postal articles and mail bags was possibly an additional qualification for him to obtain a renewal of his permit and thus gave him an advantage over his competitors. Hence instead of being an additional burden or a handicap to him, it was an additional advantage to him in the matter of getting a renewal of his permit in preference to others. The agreement was therefore based on mutual promises, by the appellant to carry the mail bags, etc., and by the Postal Department to pay him suitable remuneration for the services thus rendered.

It was further contended on behalf of the appellant that the Central Government could not be said to have 'undertaken' any 'service' within the meaning of s.7(d) of the Act when it made arrangements for the carriage of mail bags and postal articles through the appellant. It has not been and cannot be contended that the Government is bound in the discharge of its duties as a sovereign state to make provision for postal mail service. The provisions of the Indian Post Office Act, VI of 1898, are only enabling in the sense that they authorise the State agency to have the exclusive privilege of conveying letters, etc. for the convenience of the public and for the benefit of the Government, without making it obligatory upon to provide every individual and every place with those facilities. It may be that those facilities are being extended from time to time and are being brought nearer to every home but that is only evidence of the fact that the State as a welfare State is anxious to provide for the conveniences of the public in the matter of communications and correspondence. That is to say, the Government in the Postal Department has only undertaken a service to be rendered to the community and that

such a service is not an essential function of sovereign state. It cannot be gainsaid that the Government in the Postal Department is rendering a very useful service and that the appellant has by his contract with the Government undertaken to render that kind of service on a specified route. The present case is a straightforward illustration of the kind of contract contemplated by s.7(d) of the Act. At all material times the appellant has been directly concerned, for his own benefit, in the contract of carrying mail bags and postal articles entered into by him with the Government in the Postal Department.

For the reasons aforesaid we have not the least hesitation in holding that the conclusions arrived at by the Tribunal are entirely correct. The appeal is accordingly dismissed with costs.

The 29th March, 1955.

(Sd.) VIVIAN BOSE J.

(Sd.) B. JAGANNADHADAS J.

(Sd.) BHUVANESHWAR P. SINHA J.

[No. 19/35/52-Elec.III/6710]

By Order,
K. S. RAJAGOPALAN, Asstt. Secy.